

***United States Court of Appeals
for the Second Circuit***



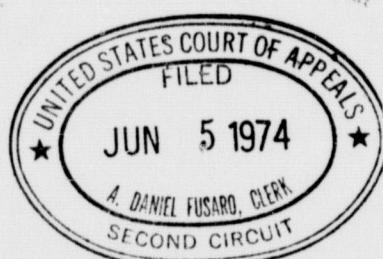
EXHIBITS

74-1398

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
UNITED STATES OF AMERICA, :
Appellee, :
-against- :
CARMINE TRAMUNTI, :
Defendant-Appellant. :
-----x

EXCERPTS FROM THE
AT-YOUR SERVICE LEASING
TRIAL TESTIMONY



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Q But Mike had an answer to you; right? He could back-date the document?

A The first answer I got, sir, was not Mike Hellerman backdating. The first answer I got was from the attorney for the corporation, at that time Gerald Miller, who stated there was no need to worry, he had an extension. Up until the time I went to that closing and Gerald Miller stated, "We have an extension."

Q You thought you had a lawful --

THE COURT: Wait.

I learned on that date, when Gerald Miller said we had an extension, and he was the attorney for the corporation, and I had my faith in him at that time, not up until that time. When Mike Hellerman said, "Stop the bullshit. There is no extension," I was unaware of the fact that there was no thirty days.

Q When you went there, that was at Mike's office; is that correct?

A I assumed so; that is correct.

Q Who was present?

A In the office.

Q Yes.

A There was Ralph Lombardo; there was Mike Hellerman, Arthur Ferdinand, myself; there was Gilbert

2 Dragani, Don Fisher, Andrew Nelson, Gerald Miller, Morris
3 Winters. There were a couple of other people there also,
4 but I don't recall their names.

5 Q You said one was a heavy-set fellow.

6 A Yes.

7 Q Did Mr. Schreiber show you any pictures of some-
8 one that he said might be the heavy-set person?

9 A No, sir.

10 Q Did you have any discussions with Mr. Schreiber
11 in the past couple of weeks with respect to whether you
12 could recall all the people who were present at the Stoma
13 Investment closing?

14 A The question Mr. Schreiber asked me was who the
15 people were who were present at the closing, and I stated
16 the same answer I just gave to you now.

17 Q Did he show you any pictures in the past few
18 weeks?

19 A No, sir.

20 Q Did you know any assistants by the name of
21 Naftalis or Rakoff?

22 A No, sir.

23 Q When you said to Mr. Schreiber or said to this
24 jury that one of the people at the meeting was a heavy-set
25 person -- Do you recall that?

2 A Yes, sir.

3 Q And did you have any discussions with Mr.
4 Schreiber about who that heavy-set person might be or was?

5 A No, sir.

6 MR. LEWIS: Your Honor, may we have a recess now,
7 please?

8 THE COURT: What?

9 MR. LEWIS: May we have our recess now? I want
10 a recess.

11 THE COURT: Yes. This is a good time. Have you
12 any objection, Mr. Goldberg?

13 MR. GOLDBERG: I have no objection.

14 THE COURT: Ten minutes, ladies and gentlemen.

15 (The jury left the courtroom.)

16 THE COURT: How much longer are you going to be?

17 MR. GOLDBERG: Fifteen or twenty minutes, your
18 Honor.

19 THE COURT: Any application?

20 (Recess.)

EOT 3A

or 45 minutes later Mr. Fusco and Mr. Savino came out into the office there, and I think Mr. Savino used the phone at that time, if I remember correctly.

THE COURT: Did you talk to him?

THE WITNESS: No. I didn't say anything to him.

Then I went into Mr. Hellerman's office and--

MR. LITTLEFIELD: I do not think you have to go into that.

I think the issue is identification now.

Q Did there come a time when you were interviewed by Mr. Schreiber in connection with this case?

A That's correct. Yes, sir.

Q Were you shown certain photographs?

A Yes. He showed me maybe a dozen or two dozen photographs.

Q Did you make identifications of certain individuals?

A I picked out Mr. Fusco, Mr. Savino, and Mr. Lombardo, photographs of them.

MR. LITTLEFIELD: Your Honor, I would excuse Mr. Nelson and ask Mr. Schreiber to make a statement as to the photographs and the showing of the photographs.

MR. NEWMAN: I object to that. I would first like to cross-examine Mr. Nelson in connection with those photographs.

THE COURT: What was your application?

MR. LITTLEFIELD: I will ask one more question
of Mr. Nelson.

BY MR. LITTLEFIELD:

Q What conversation did you have with Mr.
Schreiber at the time he showed you the photographs?

A He just showed me the photographs and said
did I recognize anybody in this group.

Q Did he point to any photograph and say ---

A No, he spread them out.

MR. NEWMAN: May we know what he did without
the leading on this point. I think this is a critical
point.

THE COURT: He asked a question and he said
he didn't.

Q With respect to Mr. Lombardo, on how many
occasions did you see him?

A I saw him on several occasions. He was
with Eddie Graifer quite often.

Q Was he with Graifer on every occasion you
saw Graifer?

A Not on every occasion but on many.

Q By "several" you mean 10, 15, or 2?

A It was more than 2. He was in my office at

least twice that I can remember. I saw him with Graifer in Hellerman's office at least twice. In that itself it was at least four times.

THE COURT: Are there any other times besides that?

THE WITNESS: That's the best I can recollect, your Honor.

Q You are recollecting four specific occasions?

A Four specific occasions.

Q Were there other occasions as well without being able to recollect specifically?

A There were occasions when -- not in my office or not in Hellerman's office -- when I met Graifer at one point or another.

Q And Lombardo?

A Lombardo would be with him.

Q Graifer introduced you to Lombardo; is that right?

A Very, very casually, if anything. I don't think he told me his last name. He said, "This is Ralph."

11/26/73
AM 2-5

Couch 1

Nelson-direct

2724

Q Did you have conversations with him?

A "Hello" and nod of the head and that was about all.

MR. LITTLEFIELD: Your Honor, I have no further questions on the subject of these three identifications.

MR. NEWMAN: May I proceed?

May I have the pictures, please?

MR. LITTLEFIELD: We will offer the pictures through Mr. Schreiber. I am not sure Mr. Nelson knows which pictures he saw.

MR. NEWMAN: As I understand Simmons, Wade, Sovel and Gilbert, the idea is to see whether there is anything suggestive about the pictures, and I think the witness should be asked, concerning the pictures, how they were displayed to him, whether any of them were suggestive --

MR. LITTLEFIELD: I would suggest, your Honor, that Mr. Schreiber make a statement as to what pictures were shown.

THE COURT: Mr. Schreiber can -- he can give Mr. Newman the pictures on the representation that those were the pictures that were shown.

MR. SCHREIBER: I think we had better do this at the side bar.

THE COURT: He doesn't want the witness to know

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what is being said.

(At the side bar.)

MR. SCHREIBER: I just want to tell you what happened. This was from the group of photographs that I showed Mr. Nelson. I had been on the stand before in the Tramunti trial in which there were duplications and, therefore, to avoid duplications I picked out one photograph of each of the people there and showed him those. That is why, if I gave you the whole batch, I didn't show him the whole batch.

MR. NEWMAN: Show me what you showed him. That is all I want.

MR. GOLDBERG: Did you show him Tramunti?

MR. SCHREIBER: Yes.

MR. GOLDBERG: Oh, good.

(Pause.)

MR. SCHREIBER: You can look at these, if you want.

MR. NEWMAN: Not if you didn't show them to him.

MR. SCHREIBER: I am not sure whether I gave him two of Lombardo. I may have. You can ask.

MR. DI PAOLA: How many did you give him?

MR. SCHREIBER: These are the ones.

MR. DI PAOLA: All of these?

MR. SCHREIBER: Yes.

THE COURT: Mr. Newman, Mr. Schreiber is handing Mr. Newman a group of photographs which he represents he showed to the witness on this occasion.

MR. SCHREIBER: What I did, your Honor, is --

I withdraw that -- let me just step back. We had an identification hearing of Tramunti, Gilbert Dragani identified Carmine Tramunti up at Hellerman's office, and what happened on that occasion, I had Mr. Dragani in in this preparation for trial, I asked Dragani the same thing, "Can you identify any of these people," and without regard to any of them, I showed him one picture and he said, "I can't recognize him," but he reached over my desk and grabbed the picture of Tramunti and said, "I have seen him up there in Hellerman's office," and that was very, very important.

THE COURT: What has that to do with this case?

MR. SCHREIBER: That is very important because Tramunti was on trial on the question of perjury as to whether he knew Hellerman in the Imperial trial.

THE COURT: What's that got to do with this case?

MR. SCHREIBER: I am getting to it. I'm sorry I'm so long-winded.

Dragani testified at the Tramunti trial and at that trial I was required to come up on the Simmons hearing and

2 take the stand and Mr. Goldberg was there. I sat in when
3 he questioned Deagani, and Mr. Goldberg pointed out that
4 there were a number of duplications, so that when Mr. Nelson
5 was in my office, I believe it was after that, and I had
6 that awareness that we may have this problem, so I took
7 out the duplications, I believe.

8 THE COURT: Okay.

9 MR. SCHREIBER: To be absolutely sure, that is
10 my memory, it is possible I am mistaken. These are
11 the other photographs, this other package I have in my
12 hand, which I am handing Mr. Newman now, are the other
13 photographs that I had in this white envelope in which I
14 kept them.

15 My memory is that the first package I gave you
16 are the ones that I showed to him. I am not absolutely
17 positive.

18 THE COURT: That you might not have shown him
19 some from the second package?

20 MR. SCHREIBER: Yes. Basically, I asked him
21 whether he could identify any of those individuals and
22 he picked out, as he indicated, Lombardo, Fusco and
23 Savino.

24 He said that he knew Lombardo as the guy with
25 Graifew and he identified Fusco's picture and Savino's

2 somch 6

Nelson -direct

Q July 7th came and went, the last day on which you could legitimately sell, is that right?

A That's right.

Q Thereafter, you had a discussion with Miller about whether you could sell stock after July 7th, is that right?

A That is correct.

Q And then towards the end of July there was a closing, is that right?

A That's right.

Q The closing held at Hellerman's office that you have not yet testified about.

A Right.

Q This meeting with Fusco, am I correct in that it was after the last date on which stock could be sold, July 7th, and prior to the closing, which was July 26th?

A That is correct.

THE COURT: Can you fix the date any better than that?

Q Was it closer to the closing than to the date July 7th?

A It was -- there wasn't that great a period in between. I would say it was closer to the closing. I can just remember really the time spread.

MR. LITTLEFIELD: I have no further questions
on that.

CROSS-EXAMINATION

BY MR. NEWMAN:

Q Mr. Nelson, you told Mr. Littlefield that there were four occasions specifically that you remember seeing Mr. Lombardo.

A Yes, sir.

Q Do you remember when the last of those specific occasions were, sir?

A The last time I remember seeing him was at the closing at Hellerman's office.

Q Do you remember the approximate date of that?

A August 18th, approximately.

Q When you say, "At the closing," you mean in Hellerman's office?

A That is right.

Q Did he attend the closing?

A No, he was sitting in the anteroom.

Q Prior to that, when was the last time you had seen him?

A He was with Graifer, I am pretty sure, at TDA offices and he had been at my office at least on two occasions.

Q Did he have any conversation with you on either of these three occasions?

A Nothing specific that I can remember.

Q How long did your seeing him on those three prior occasions last?

A Oh, he was probably in my office a period of maybe one or two hours, and fairly briefly at the other occasions.

Q Did he have any conversation with you on either of those occasions?

A Just a nod or "hello" or something like that is about all.

Q When you say in your office, sir, did your office consist of more than one room?

A Yes.

Q Was he in the same room with you during this hour period?

A Yes, he was. He was sitting with Graifer.

THE COURT: What was going on?

THE WITNESS: It was a business discussion about the offering, your Honor. He took no part in it.

THE COURT: He took no part in it?

THE WITNESS: No, sir.

Q There came a time that you were interviewed by

Mr. Schreiber?

A That is correct.

Q Do you remember the date of that interview?

A No, sir, I don't.

Q Can you approximate for us when it was?

A Can I check my calendar?

THE COURT: Sure.

A I believe it was October 22nd, Veterans' Day.

Q Of this year?

A Of this year.

Q Where did this interview take place?

A In Mr. Schreiber's office.

Q If you know, did Mr. Schraiber make any notes or memoranda while he was interviewing you?

A Yes, he did.

MR. NEWMAN: I'm sorry. May I regain my train of thought? I was invaded.

Q Now, on the occasion --

MR. SCHREIBER: Might I interrupt you for a second so the Court can take judicial notice of the date?

THE COURT: Mr. Goldberg put a picture on the lectern.

MR. SCHREIBER: I have the transcript of the Tramunti trial.

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Nelson-Cross

THE COURT: What's that got to do with it?

MR. SCHREIBER: He said I interviewed him on the 2nd, and the Tramunti trial began, I believe, on October 18th.

THE COURT: It was before the Tramunti trial?

MR. SCHREIBER: I interviewed him after.

MR. GOLDBERG: No, you didn't. He is worried about what happened in the Tramunti case for some reason.

THE COURT: Let the cross-examination proceed.
Don't interrupt.

MR. NEWMAN: We are at the At-Your-Service Leasing trial, aren't we, Judge?

THE COURT: Yes. Go ahead. Proceed. Don't interrupt.

BY MR. NEWMAN:

Q On that occasion, sir, how long did this interview last?

A It was about three or four hours.

Q During the course of the interview, did questions arise concerning identifying people?

A Yes, sir, it did.

Q Were you given any names of people that you would be asked to identify?

A No, sir.

March 11.

Nelson-cross

Q By the way, during the time that you met Ralph Lombardo, did you notice any particular characteristics about Mr. Lombardo?

A He was relatively quiet, never said too much, rather good-looking fellow. I believe his hair style has changed since I first met him, but I am not exactly sure about that.

Q He has probably gotten older?

A We have all gotten older.

Q That's about it?

A That is about all I can remember.

Q I ask you to take a look at a batch of pictures and tell me whether these pictures were shown to you on the 22nd.

MR. SCHREIBER: Do you want to have those marked as an exhibit?

MR. NEWMAN: Let me count them first to distinguish them from the other batch.

MR. LITTLEFIELD: Your Honor, I would object to the specificity of the question. I don't know that he is going to remember each picture.

THE COURT: He is conducting the cross-examination. Would you please be quiet?

MR. LITTLEFIELD: I understand, but that question

I don't think can be answered.

THE COURT: There is nothing wrong with the question. He may not be able to answer it. There is nothing wrong in cross-examination to ask a question deliberately for the witness not to be able to answer it and see if he does.

MR. NEWMAN: May I continue?

This is a batch of sixteen pictures, may we deem them marked for identification for the purpose of this hearing only.

Can we deem them marked instead of marking them all over the place? It is without the jury. They are not going to be shown to the jury.

THE COURT: We will deem them marked for identification.

XXX

(Defendants' Exhibit L deemed marked for identification.)

Q Now, sir, I ask you to look at this batch of sixteen pictures and tell me whether they were exhibited to you.

(Pause.)

A At least some of them were.

Q Can you remember by looking at them, sir, which were?

A I remember these because they have my --

Q We have got to get some continuity.

A These, specifically, I can remember.

Q These three pictures?

A I initialed and dated those.

Q All right, sir. Would you turn them over and see if you find your initials and date on them?

A Right here (indicating). 10/22/73, A.N. A.N.,
10/22/73.

Q These three pictures --

MR. NEWMAN: May we deem them marked separately, Judge?

THE COURT: Yes.

Q Those are two pictures of Mr. Lombardo and one picture of Mr. Savino, is that right?

A That is correct.

MR. NEWMAN: May we have them marked separately.

(Defendants' Exhibits L-1, L-2 and L-3 marked for identification.)

A I also remember this one specifically.

MR. SCHREIBER: Which one is that? Can we identify that, too?

THE COURT: Does it say who it is?

MR. SCHREIBER: Yes.

MR. NEWMAN: John Dio.

A I didn't recognize it as John Dio. I had it confused with somebody else at that time. I had never seen Mr. Dio. I thought it was the head of legal aid upstairs.

MR. NEWMAN: May we mark this picture separately, please.

THE COURT: Yes.

xxx (Defendants' Exhibit L-4 marked for identification.)

THE WITNESS: I know these --

MR. NEWMAN: Wait a minute. Let him finish marking those.

THE WITNESS: Okay.

Q Now go ahead, sir.

You pointed to some other pictures.

A I also remember these two particular ones and I believe this one was also there. Those are the only ones I can be absolutely sure I saw.

MR. LITTLEFIELD: Let's mark them. Can we identify them as he recognizes them?

THE WITNESS: I didn't know any names. I just happened to remember this one because he had the Intelligence Division plaque.

Q This is a picture of Carlo Falliace?

THE COURT: You didn't recognize the man when you

saw him, but you just now remember having seen that picture?

THE WITNESS: That particular picture. These three people I don't recognize -- I do now this one, but at that time I didn't know who it was.

MR. LITTLEFIELD: Pointing to the picture of Vincent Alci.

Q The other picture that the gentleman pointed to was Anthony DiLorenzo, with quote marks, which looks like "Hickey" on the back.

MR. LITTLEFIELD: What is your --

THE COURT: Mr. Littlefield, would you please sit down? This man is cross-examining. Sit down and let him be cross-examined.

MR. LITTLEFIELD: We just don't know for the record what photographs are being identified.

THE COURT: Let him do the cross-examining and then you do the redirect examining.

MR. LITTLEFIELD: I have to be able to see the photographs.

THE COURT: I will see that you see them in due time, but don't interrupt the cross-examination. I don't think it is going to get anywhere, but at least don't interrupt it.

Proceed.

Couch 16

Nelson-cross

A I just happened to remember the striped shirt.

Q Were there any other pictures that you were shown on that date that you can remember?

A There was one more of Mr. Fusco that is not here, that I picked out.

Q There is a picture here and I want to see if this is the picture.

THE COURT: First mark these for identification separately, that he said he recognizes.

MR. NEWMAN: All right.

(Defendant's Exhibits L-5, L-6 and L-7 marked for identification.)

THE CLERK: This one is already marked.

Q You told us, sir, before we had these pictures marked that you picked out some pictures of Mr. Fusco that were not in that group of sixteen that I had shown you.

A That is correct, sir.

MR. NEWMAN: May we mark these, please, for identification?

(Defendants' Exhibits M-1 and M-2 marked for identification.)

Q Would you please take a look at Defendants' Exhibits M-1 and M-2 for identification and tell me whether

16 March 17

Nelson-cross

2740

17 either of these two pictures, sir, were amongst the
18 group shown to you on October 22nd?

19 A These both were identified, this one as being Mr.
20 Fusco by my initials and date --

21 Q You say on M-2 you put your name and initials?

22 A I put my name and initials and the date.

23 Q Pointing to some writing at the bottom of M-2
24 for identification.

25 Now, of this other batch that is here that composed
26 the sixteen pictures, were any of those pictures shown to
27 you on October 22nd?

28 A I believe so, but I can't specifically say yes.
29 Some look vaguely familiar, but I couldn't say this one
30 or this one was.

31 Q Other than October 22nd, were you shown any other
32 pictures on any other date?

33 A No.

34 Q October 22nd was the sole situation?

35 A That was the only time.

36 MR. NEWMAN: May I have all of the pictures that
37 we have marked, Mr. Clerk, for identification.

38 Q Dealing solely with the pictures that were
39 individually marked for identification, the L-1 and M-1
40 series, can you tell me whether these pictures were shown

2741

2
them, "Do you recognize anybody in this stack?" and I
3
spread them out.

4
THE COURT: He spread them out or you did?

5
THE WITNESS: I'm pretty sure I did, your Honor.

6
Q Now, sir, we have here L-2 and L-3, which you
7
will agree with me are four pictures of Mr. Lombardo.

8
A Right.

9
Q Two different views.

10
A Yes.

11
Q That was amongst the group?

12
A That is correct.

13
Q Can you tell me, in this group of pictures, how
14
many there were, totally?

15
A Of Mr. Lombardo?

16
Q No, of all the pictures that you viewed?

17
A Oh, fifteen or twenty.

18
Q Of those fifteen or twenty, two of them were these
19
two pictures that you are holding in your hand now of Mr.
20
Lombardo?

21
A That is correct.

22
Q Four separate pictures of Mr. Lombardo, two
23
different views?

24
A Right.

25
Q Prior to that time you had been arraigned on

the indictment?

A That is correct.

Q On the day of your arraignment, was Mr. Lombardo in court?

A I believe all defendants were, except one.

Q Do you have any recollection of seeing Mr. Lombardo on that day?

A I would say yes. Specifically, I don't remember him, but I know all the defendants were there.

Q On the day that you were arraigned, sir?

A Yes, I think Mr. Alois from Florida was not there, but everybody else, to my knowledge, was there.

Q Between the time of the arraignment and the time that you picked out those pictures on October 22nd, had you had occasion to see Mr. Lombardo?

A No, sir.

Q Before walking into this courtroom today, did you have occasion to see Mr. Lombardo since October 22nd?

A No, sir.

Q Have you at any time come into this courtroom between the 22nd of October and today's date?

A No, sir, I haven't.

Q Has anybody told you what the seating arrangement is at the counsel table between October 22nd and today's

date?

A No, sir.

Q Have you ever seen me before, sir?

A Yes, sir.

Q Where?

A At the arraignment.

Q You are sure of this?

A Yes, sir. I remember the beard.

THE COURT: There may have been another fellow with a baard.

THE WITNESS: It was Mr. Newman.

MR. NEWMAN: It wasn't at the arraignment. I didn't represent Lombardo at the arraignment.

THE COURT: Probably Mr. Brialle.

MR. NEWMAN: It could be.

I have a separate batch now of five separate pictures that were handed to me in a separate packet by Mr. Schreiber at the side bar.

May we just deem them marked with one letter unless we become specific about it.

(Defendants' Exhibit N marked for identification.)

MR. NEWMAN: To avoid confusion, may I ask Mr. Schreiber to hold this other batch.

MR. GOLDBERG: Are they marked for identification?

2 I want to keep notes, your Honor.

3 MR. NEWMAN: The only ones separately marked,
4 Mr. Goldberg, are the ones in the batch the witness
5 remembers specifically being shown.

6 MR. GOLDBERG: They are separately marked?

7 MR. NEWMAN: Yes, Mr. Lewis has those.

8 THE COURT: They were a part of the original
9 batch that Mr. Schreiber gave Mr. Newman, and the witness
10 picked them out as having seen them.

11 MR. GOLDBERG: Forgive me. I have no standing,
12 but just for record keeping, is there in one place all
13 the pictures that this witness says he was shown?

14 MR. NEWMAN: Yes, Mr. Lewis has those pictures.

15 THE COURT: That is the combination of what Mr.
16 Schreiber has in his hand and what Mr. Lewis has in his hand.

17 MR. GOLDEBERG: They are marked?

18 THE COURT: They are deemed marked.

19 MR. NEWMAN: Sir, I am sorry to seem to intrude,
20 the question that I thought Mr. Goldberg asked were the
21 pictures that the witness remembers being shown.

22 Was that what you had asked?

23 MR. GOLDBERG: Yes.

24 MR. NEWMAN: That is the batch only that Mr.
25 Lewis has.

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remembered the features.

MR. NEWMAN: Mr. Lewis, before I make any identification, would you stipulate this is a picture of Mr. Alois?

MR. LEWIS: A very bad picture. This is a nicer picture.

MR. NEWMAN: May we have this specifically marked, the picture of Mr. Alois?

THE COURT: The witness didn't say he had seen that picture. He said he had seen either that one or one similar to it.

XXX

(Defendant's Exhibit N-1 marked for identification.)

XXX

MR. NEWMAN: Mark these three, please.

(Defendants' Exhibits N-2, N-3 and N-4 marked for identification.)

MR. GOLDBERG: Your Honor, are all counsel required to be present at this hearing conducted on the limited issue of Lombardo? What is your preference?

THE COURT: If you wish to withdraw and waive your presence and waive your client's presence, I will permit it.

MR. GOLDBERG: Thank you, your Honor.

O Now, sir, directing your attention to N-2 for identification, N-3 for identification, and N-4 for

Identification, which you will agree with me are two pictures of Mr. Savino and one picture of two separate poses of Mr. Lombardo --

A That is correct.

Q -- were those three pictures that I have referred to amongst the batch that were shown to you that day?

A Definitely these two.

MR. NEWMAN: When he says definitely, Judge, he is referring to N-2 and N-4 for identification, pictures of Mr. Savino.

THE COURT: Which have his initials on them?

THE WITNESS: Yes, sir.

THE COURT: They do.

A To the best of my recollection, this one was also included.

MR. NEWMAN: He is referring to N-3 for identification, a picture of Mr. Lombardo.

Q Would you look at the back? There is some writing on the back.

A No, I didn't initial on that. I put all my initials went on the front.

Q So, to the best of your recollection, these three, N-2 and N-3 and N-4 were in the batch that were shown to you that day?

2 A Yes, sir.

3 Q Directing your attention to N-1 for iden-
4 tification --

5 A Yes, sir.

6 Q -- a picture of Mr. Alois, that was not shown
7 to you that day?

8 A No, sir. I said I thought that either this one
9 or one identical to that, very similar to it, was there.
10 I can't be specific.

11 Q I didn't mean to pull it away.

12 A I said I couldn't be specific whether that was
13 the actual one or not.

14 MR. NEWMAN: Would you bear with me, your Honor?

15 THE COURT: Yes.

16 (Pause.)

17 THE WITNESS: There is one more up here, sir.

18 MR. NEWMAN: I was getting confused, Judge.
19 I tried to get the pictures separate. They commingled
20 them and that is what happened.

21 Q Now, sir, I am showing you a group of twelve
22 pictures and would you look at them again, so we are doubly
23 sure, and tell me whether, to the best of your recol-
24 lection, this is the group of pictures that were shown to
25 you that day?

THE COURT: This was among the group?

MR. NEWMAN: This is the total group, based on L, M and N, that we have had specifically marked for identification, and I want the witness to have another chance to look at them.

THE COURT: You are not asking him whether these are the only ones that were shown to him, but were these among the ones shown to him; is that your question?

MR. NEWMAN: I am trying to pin it down now to ask him whether these were the only ones shown.

A No, these were not the only ones shown. They were among the ones shown. They were all initialed and dated by me. These I specifically remember for one thing or another.

These were some, but not all of the pictures.

Q Can you tell us, as you sit here now, how many, in toto, were shown to you?

A No, I can't.

THE COURT: What would be your best estimate?

THE WITNESS: Approximately twenty, maybe.

Q So that I am correct, six of them you have selected which have your initials on them?

A That is correct, sir.

Q So the record is clear, that is L-1 for iden-

tification, L-3 for identification, M-2 for identification, L-2 for identification, N-2 for identification, and N-4 for identification?

A Right. Those are definite.

Q Of those, sir, of those six pictures I am referring to, two of them are of Mr. Lombardo, actually four pictures of Mr. Lombardo, two separate poses; four pictures of Mr. Savino, two separate poses?

A Right.

Q I'm sorry, five pictures of Mr. Savino, and one picture of Mr. Fusco; is that correct?

A That's right.

Q Now, you have pointed to another group, sir, which you think, to the best of your recollection, were shown to you.

A That's right.

Q But you don't have your specific initials on them?

A No, I don't.

Q That is composed of a batch of six pictures?

A That's right.

Q Of which one of them containing two poses is marked N-3 for identification, is of Mr. Lombardo, is that right, sir?

A That's right.

Q Another one, marked M-1 for identification, containing two pictures, is of Mr. Fusco; one of them with just one picture, marked L-4 is of Mr. Dio, and one of them, marked N-1 for identification, is of Mr. Al-oi?

A Yes.

Q So that I understand your testimony in toto, sir, your best estimate for Judge Knapp was that a total of twenty pictures were shown?

A Approximately twenty.

MR. NEWMAN: I have no further questions of the witness at this time, Judge.

MR. DI PAOLA: Just a few questions, Judge. I don't want to repeat what Mr. Newman did.

CROSS-EXAMINATION

BY MR. DI PAOLA:

Q You did say, Mr. Nelson, that you initialed those pictures that you recognized?

A Yes, I did.

Q By the way, have you seen me before?

A No, sir, I don't remember.

Q Did you initial at the request of the Assistant U.S. Attorney who showed you, or exhibited these pictures, those that you did not recognize?

A Did I initial those that I did not recognize?

2 Q Yes.

3 A No, sir.

4 Q So that you would be able to tell the Court that
5 these were among the group that were shown to you?

6 A No, I only initialed those I did recognize.

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56 Q You don't know how many other pictures were
5 shown to you?

6 A No, sir, I don't.

7 Q Were they handed to you or laid out?

8 A To the best of my recollection they were like
9 this, handed to me, and "Do you recognize anybody here?"
10 And then I spread them out.

11 THE COURT: The witness indicated they were
12 handed to him in a group and then he spread them out.

13 Q That's to the best of your recollection?

14 A Yes, sir.

15 Q You are not sure?

16 A No, sir.

17 Q Before you were shown or handed the pictures
18 were names discussed?

19 A No, sir. No names were mentioned.

20 Q No names at all?

21 A No, sir.

22 Q Were you told what this group of pictures
23 represented?

24 A No, sir.

25 Q Or who they represented?

26 A No, sir.

27 Q It is your testimony that you saw Mr. Savino for

the first time in July of 1970? Is that right?

A I believe so. Yes, sir.

Q And that was in the middle of the month?

A Yes, sir. Approximately.

Q You testified about a closing?

A Right.

Q Did you attend the closing?

A Yes.

Q Did Mr. Savino attend the closing?

A I don't remember him there.

Q You saw him before this closing?

A Yes.

Q You went to Mr. Hellerman's office?

A That's correct.

Q You waited 40, 45 minutes?

A Approximately.

Q It is your testimony you saw Mr. Savino come out?

A Yes.

Q He went to a telephone?

A Yes.

Q Did you immediately go into Mr. Hellerman's office?

A Yes, I did.

Q For how long a period did you see Mr. Savino at

that point? A second? Five seconds?

A I would say two or three minutes.

Q Two or three minutes?

A Yes.

Q Then you didn't go into Mr. Hellerman's office immediately?

A It took time to go out through the door.

Q Two or three minutes?

A Right.

Q What was Mr. Savino wearing?

A I don't remember.

Q Did he have a tie on?

A To the best of my recollection he didn't, but I could not swear to it, really.

Q When was the next time you saw Mr. Savino?

A The next time, to my recollection, was here in the courtroom.

Q That was almost three years later?

A That's right.

Q You never saw him in the interim?

A Yes.

THE COURT: Here in the courtroom means now or at the arraignment?

THE WITNESS: I don't even remember him at the

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arraignment.

Q Did you discuss Mr. Savino with Hellerman that day?

A No. Not specifically

Q What do you mean "Not specifically"?

A He didn't mention any names. I didn't ask.

Q I asked you a simple question.

A No.

Q The answer is no?

A No.

Q Did you at any time discuss Mr. Savino with Mr. Hellerman?

A No.

MR. LITTLEFIELD: I object to the question.

This is a hearing, your Honor, to discuss whether or not there was any suggestability or taint to his in-court identification.

THE COURT: Relative to that would be how much prior exposure there was.

MR. LITTLEFIELD: What if he had prior conversation with Hellerman?

THE COURT: Yes. Anything to press the incident on his mind.

Q Did you have a conversation with Mr. Schreiber

on October 22, 1973, when you identified these photographs of Mr. Savino?

A After the identification?

Q Yes.

A Yes, sir.

Q You did have a discussion with him?

A Yes.

Q You made this identification after you had pleaded guilty; is that right?

A Yes, sir.

Q You made an arrangement to cooperate with the government?

A Yes.

MR. DI PACLA: No further questions.

MR. LITTLEFIELD: I have a few questions on redirect.

Your Honor, I am not sure whether these other nine have been marked for identification.

THE COURT: They were the nine that Mr. Schreiber said he had not given.

MR. NEWMAN: The only ones that were specifically marked for identification were the ones that are on the podium up there. The rest of them were deemed marked.

THE CLERK: Deemed marked Exhibit L for

identification.

MR. NEWMAN: Yes.

THE COURT: One was the unidentified ones of the first group, and then there is a second group.

MR. NEWMAN: That's right.

THE CLERK: That's deemed marked Exhibit N for identification.

MR. LITTLEFIELD: I am confused and I would take leave of the court to make sure I have it correctly.

THE COURT: Sure.

REDIRECT EXAMINATION

BY MR. LITTLEFIELD:

Q I have before me 12 photographs marked L6, L7, L4, M1, M1, M3, M2, L3, L2, M2, M4, and L1.

Am I correct, Mr. Nelson, in that those photographs so marked are the photographs which you remember were definitely shown to you?

A Yes, sir. They were. With the exception of this one (indicating). It was either that one or one similar to it.

Q By "that one" you are referring to M1?

A Yes.

That one I don't know (indicating).

MR. LITTLEFIELD: The second batch, your Honor.

which I will now mark individually so that we have no problem --

THE CLERK: They are deemed marked L.

MR. LITTLEFIELD: I want to have them marked individually. Mark this as C-1.

THE CLERK: They will have to be P.

MR. LITTLEFIELD: P1, P2 --

THE CLERK: This is already marked L5.

MR. LITTLEFIELD: So we have P1, L5, P2, P3, P4, P5, P6, and P7.

That's marked in another case. Let's mark it in this case as P7.

P8, P9, and P10.

(Defendant Lombardo Exhibits P1 to and including
xx 10 marked for identification.)

BY MR. LITTLEFIELD:

Q Your testimony also is that with respect to those other photographs which we have marked and which you have just identified as L, M, and N, the ones I just read into the record, those were definitely shown to you, as best as you can remember?

A Yes.

Q Now there were also additional photos shown to you?

A That's correct.

Q You have examined P1 through P10 and L5, and am I correct that you don't specifically remember any of these having been shown to you? Perhaps you should look at them again (handing).

A This is the one that was too much like the other one. I cannot say which one.

Q That is L5 you are referring to?

A Right.

I can't say I specifically remember this. I do not remember them.

THE COURT: You can't say one way or the other?

THE WITNESS: They look familiar but I could not put my finger on any one of them.

Q When these photos were shown to you, were they shown face side only?

A Only face side. I started to turn one over and Mr. Schreiber told me to turn it over.

MR. LITTLEFIELD: Also, your Honor, so the record is absolutely clear, in this batch, which I read, the L's and M's and N's in which the total is 12 photos --

Q Of those 12, six of them have Mr. Nelson's initials; is that correct?

A Yes.

Q And six do not?

A That's correct.

Q Of the six that have your initials on them two photos are of Mr. Lombardo; is that correct?

A That's correct.

THE COURT: You mean two sets?

THE WITNESS: Two sets.

MR. LITTLEFIELD: May we refer to a photo as being a unit, a piece of paper?

THE COURT: Call them units. Otherwise we will get confused. Two units.

Q Two units are of Lombardo?

A That's right.

Q Two units are of Savino?

A Correct.

Q Two units --

A Three units are of Savino.

Q And one unit of Fusco?

A That's right.

MR. LITTLEFIELD: I have nothing further of
b2 this witness, your Honor.

THE COURT: I noticed that new people have come in.
Are there any friends or relatives of the jurors
in the room?

VOICE: No. It is a matter we would like to discuss

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with you, if you have a moment, at some time in the future, your Honor.

MR. HEDDEN: I have no other questions of this witness on this subject.

MR. GOLDBERG: Judge Knapp, for purposes of the record, should there not be marked for identification all of the pictures shown to Mr. Nelson as per the representation of the government?

MR. LITTLEFIELD: We are going to do it with Mr. Schreiber who will take the stand after Mr. Nelson has completed.

THE COURT: You are not finished with this hearing.

MR. GOLDBERG: I thought they were finished.

MR. LITTLEFIELD: I thought we should have Mr. Schreiber state for the record what his recollection was on what was shown.

THE COURT: All right.

You may step down.

(Witness excused.)

MR. LITTLEFIELD: You can go into the witness room, Mr. Nelson.

MR. SCHREIBER: Do you want me to take the stand?

THE COURT: Shall we accept Mr. Schreiber's representation?

MR. LEWIS: I will accept it under oath.

JAMES SCHREIBER, called as a witness, having
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LITTMANFIELD:

Q I will show you now some 22 photographs all together, P1 through 9, L5 in one batch of units, and the other batch which are L, M, and N, which I read earlier when Mr. Nelson was testifying. I ask you if that is the complete package of photographs that were shown to Mr. Nelson on the 22nd of October, 1973, and, specifically, could you make reference to whether or not you thought at one point you had removed some of the duplicate photographs prior to showing them all to Mr. Nelson?

A I took a look at the transcript that we have of the Tramunti trial, and I apparently testified in the Tramunti trial the day after, on the 23rd of October, and Mr. Nelson's on these photographs are the 22nd. So, apparently, my statement that I withhold some of the photographs was wrong because I had not testified at that point.

My present memory, I am not absolutely certain of it, but my present memory is that the whole package of these documents were given to Mr. Nelson. He was asked

to identify any of them if he could recognize them, and I just also want to say that these photographs had been kept in my office in one envelope for purposes of showing them to the witnesses.

Mr. Littlefield has that envelope.

MR. LITTLEFIELD: I will ask that this be marked the next government exhibit.

(Government Exhibit 32 marked for identification.)

Q I show you, Mr. Schreiber, Government Exhibit 32 for identification. I ask you if you recognize that?

A That is the envelope that these photographs had been in, I believe, prior to my showing them to Mr. Nelson.

Q Is it your practice with respect to photos in the envelope to take them all out of the envelope and show them to the witness until that time when you thought in the future you might take out some of the duplicates?

A I believe what I did with Mr. Nelson at that time was to show him all the photographs in that envelope. I believe, perhaps, that another witness, it may have been Kelsey -- I'm not even sure whether it was Kelsey -- I took out -- I remember one occasion taking out the duplicates. My best memory is that I showed them all to Nelson at that time.

THE COURT: I take it what you are saying is since you made the statement at the side bar the fact that you removed the duplicates, the time you mentioned that at the side bar you were under the impression you did that before you saw Nelson. Now you have a specific memory you did it after the Tramunti trial, and the record shows that Nelson came before the Tramunti trial?

THE WITNESS: Andrew Nelson was in my office the day before I was asked to testify in Tramunti and I was wrong as to the sequence.

Q Could you briefly describe to the Court how you showed the photographs to Mr. Nelson?

THE COURT: Was it any different than what Mr. Nelson said?

THE WITNESS: I believe I handed it to him shortly after he came into my office.

Q The whole package?

A The whole package, and asked him if he recognized any of those individuals, had ever seen any of the people, to the best of his recollection, whether he remembered seeing them.

Q Did you spread them out for him or did he spread them?

A I don't remember that. I have no reason to

cross

believe that I didn't do what he said. I don't remember.

MR. LITTLEFIELD: I have no further questions.

MR. GOLDBERG: Are they marked?

MR. LITTLEFIELD: They are all marked.

MR. GOLDBERG: May I see them for a moment?

(Pause)

MR. GOLDBERG: I don't want to slow up the proceeding. Are there any other questions?

MR. NEWMAN: I have no questions.

(Pause)

MR. NEWMAN: Let me withdraw that.

May I proceed, your Honor?

THE COURT: Sure.

CROSS-EXAMINATION

BY MR. NEWMAN:

Q Did you make any notes or memoranda concerning your conversation with Mr. Nelson on that day in question?

A I believe I was preparing questions for direct examination at that time.

Q Did any of those questions, sir, have anything to do with the identification?

A I believe there were some questions relating to the identification of the defendant Fusco and the

Defendant's wife, yes. I'm not sure it was that day. I recall making notes relating to the questions that I wanted to ask on that subject.

Q Did you make any notes or memoranda, sir, concerning the subject matter of Ralph Lombardo and the photographs exhibited to Mr. Nelson?

A At that time?

Q Yes, sir.

A No, I did not.

Q Did you at any later date make any notes on your recollection of events that occurred on October 22nd?

A No. I don't believe so, other than what I was doing was constantly preparing questions that I hoped to ask of the witness and to the extent that those questions related to what happened in my office on October 22nd I would have to say that the notes were made to the extent the information he gave me was going to be incorporated in the questions.

Q Are those notes and memoranda included in the so-called 3500 material delivered to counsel?

A No. They are not.

MR. NEWMAN: I respectfully request that they be added to the 3500 material.

THE COURT: It does not seem to me to be necessary.

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5 MR. NEWMAN: May I have my exception for the
record?

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8 THE WITNESS: So the record is clear, those
are what I consider my work product, the questions I
intended to ask of the witness.

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10 MR. NEWMAN: I know you are not inviting my
response to that, Judge.

11
12 THE COURT: Is there anything further?

13
14 MR. GOLDBERG: No, your Honor.

15
16 MR. NEWMAN: May we have, in any event, that
material that Mr. Schreiber feels is his work product
either handled in one of two ways: submitted to your Honor
for your consideration and in the absence of that submit
it and seal it if it should become necessary for the
Court of Appeals to consider this matter.

17
18 THE WITNESS: I have no objection to that.
It is in two forms: one is my rough and the other is the
type of the rough, the typing of the rough, the questions
I intended to ask.

19
20 Which one does Mr. Newman want?

21
22 THE COURT: Both, I imagine.

23
24 THE WITNESS: Can I submit the rough because
the typed one is in my notebook. That's the one I will use.

25
26 THE COURT: Is there any difference?

It was your banker, Graifer, who introduced you to Hellerman, right?

A Pardon me?

Q It was your banker, Graifer, who introduced you to Hellerman.

JUDGE COURT: Never mind the characterization.

Q It was Graifer who introduced you to Hellerman?

A Yes.

Q You were asked the question whether you ever saw Ralph Lombardo and you said several times.

A Yes.

Q Did you notice anything about Ralph Lombardo when you saw him?

A Other than he never said very much -- he is very quiet. He was there.

Q Did he ever enter into any discussion with you?

A Not at all.

Q Did he ever say anything to you more than hello or goodbye?

A No.

Q Did you notice anything about him physically?

A Nothing particularly, no.

Q I think you told us at this closing he sat in the anteroom?

A Yes.

Q I think you told us also after this closing that you almost -- and stop me if I am quoting you incorrectly -- almost visited or were with Mr. Hellerman on a daily basis?

A Just about.

Q At that point you were not only working at Your Service Leasing but you were also working Globus?

A Yes.

Q By the way, did you ever find out that Mr. Hellerman moved Globus from 3 to 12?

A I don't remember that, no.

Q Did you ever find out whether he moved at Your Service Leasing from 3 to 12?

A To my knowledge the highest that ever was was 5.50.

Q To your knowledge?

A Yes, sir.

Q How about Globus? Do you know how far he moved that?

THE COURT: What is the relevancy of Globus?

MR. NEWMAN: I withdraw that, your Honor.

Q You told us about a transfer agent situation, right?

A That's correct.

Q That was your company, wasn't it?

break.

THE COURT: Ladies and gentlemen, we will see you at 2 o'clock.

(Jury leaves room)

MR. LITTLEFIELD: The government would offer its Exhibit 37.

THE COURT: There being no objection it is received.

(Government's Exhibit 37 received in evidence.)

MR. GOLDBERG: To the extent the witness said there unidentified people, I would like to know whether Mr. Schreiber exhibited to him any picture spread.

THE COURT: Are you going to have any identifications?

MR. LITTLEFIELD: No.

MR. GOLDBERG: If there was a picture spread shown to him and he picked out any of these unidentified people, they might be potential witnesses and I would like to know if he was shown a spread by Mr. Schreiber like Mr. Nelson was shown a spread.

MR. LITTLEFIELD: There is no identification in this case.

THE COURT: He might have identified the wrong person.

MR. GOLDBERG: Your Honor, I would like to know—

MR. LITTLEFIELD: I think the witness should step c .

THE COURT: Was there any picture shown him as far as you knew?

MR. SCHREIBER: I don't recall.

MR. GOLDBERG: Was a picture spread—

MR. SCHREIBER: I said I don't recall. Mr. Goldberg is trying to have a little discovery—

MR. NEWMAN: No, he is not. He is anticipating what I was going to ask in connection with Lombardo.

THE COURT: He says he doesn't recall. Can you find out?

MR. LITTLEFIELD: I will find out.

MR. SCHREIBER: I think Mr. Littlefield is handling his testimony.

MR. LITTLEFIELD: I definitely showed him no photograph.

MR. SCHREIBER: I don't believe that I showed him.

THE COURT: Find out if there was any shown him.

MR. NEWMAN: May we have a representation to that effect by the government after the luncheon recess?

MR. GOLDBERG: Particularly during October whether you showed him a picture spread. That is only a short

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while ago. You don't have to say you don't believe.

MR. LIPMANFIELD: We will try to find out.

(Luncheon recess)

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AFTERNOON SESSION

(2.15 p.m.)

(In the robing room.)

MR. LITTLEFIELD: The purpose of this matter is, your Honor, to say that I have spoken to the witness and to Mr. Schreiber about the question of whether there was a photographic show up which this witness participated in and the answer is that some time in October, according to his recollection --

THE COURT: The witness'?

MR. LITTLEFIELD: Yes.

According to his recollection, Mr. Fisher's recollection, he did see this package of photographs. It was shown to him by Mr. Schreiber. Mr. Schreiber doesn't know the date he showed them to him and has no direct recollection of Mr. Fisher having been shown the photographs, but he agrees, if Mr. Fisher says he was, that he was. Mr. Fisher picked out none of the photographs.

These are the same photographs we have already marked through Mr. Nelson's statement.

MR. GOLDBERG: There is no way of fixing the date?

MR. LITTLEFIELD: It may be possible that Mr. Schreiber by looking back through his own calendar, but

he looked through his calendar and couldn't find anything at first glance.

The witness thinks it was in October and thinks it was in the beginning two weeks of October and not October 23rd.

MR. GOLDBERG: Prior to that?

MR. LITTLEFIELD: Yes, prior thereto.

THE COURT: All right.

(In open court; jury present.)

MR. LITTLEFIELD: May we continue, your Honor?

THE COURT: Please do.

- -

D O N A L D K. F I S H E R , resumed.

MR. LITTLEFIELD: At this point, if there is no objection, the Government would offer 37 in evidence.

MR. NEWMAN: No objection.

THE COURT: Received.

(Government's Exhibit 37 was received in

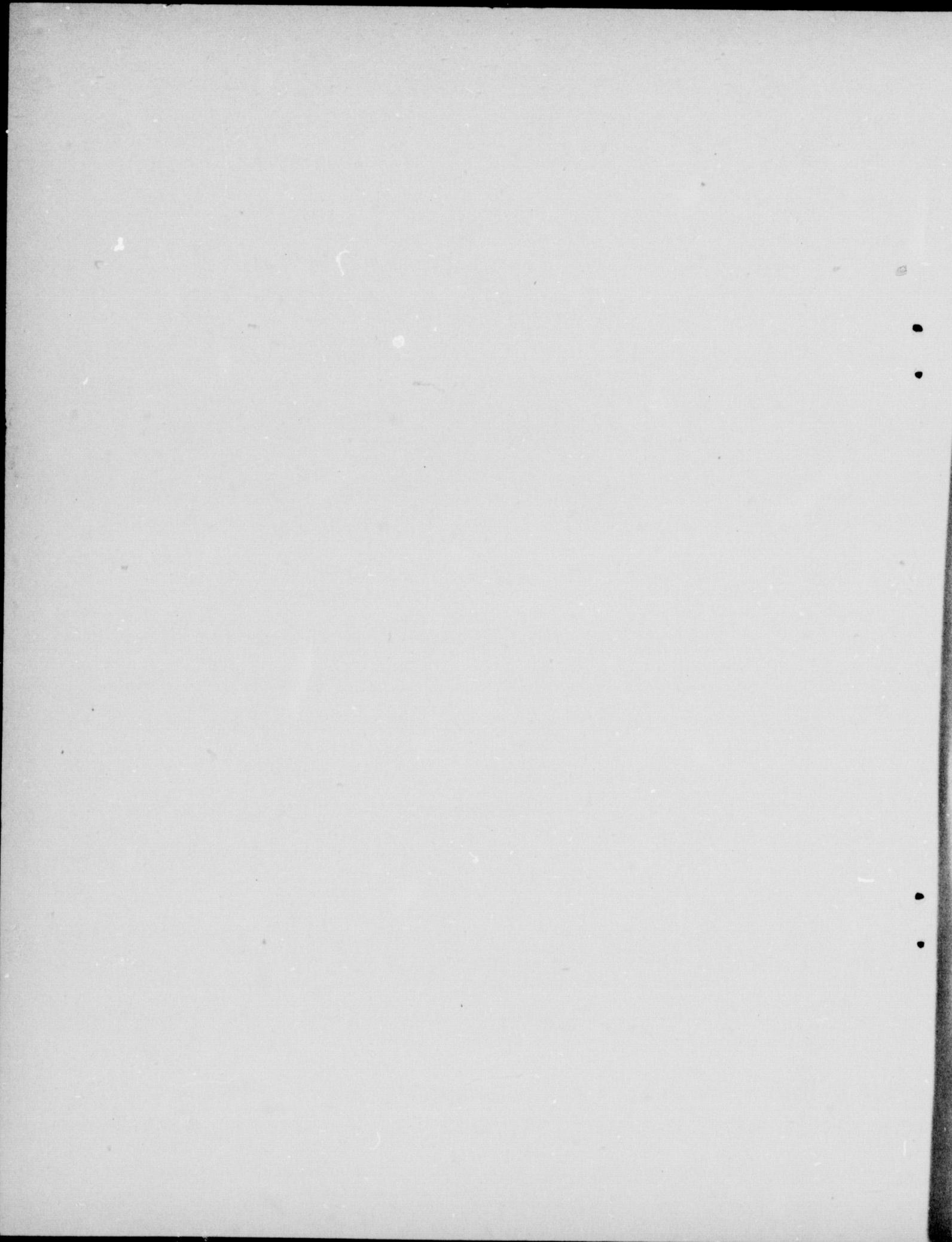
evidence.)

DIRECT EXAMINATION (Continued)

BY MR. LITTLEFIELD:

Q Now, Mr. Fisher, the closing was held on what date again?

A On the 27th of July.



A copy of the within
was served this
date on the attorney
for the Defendant of
^{June}
May 4, 1974, A. W. Chen

